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BEFORE THE ARIZONA CORPORATION

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COMMISSIONERS

GARY PIERCE – Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

2012 APR 23 P 12:42

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE COMMISSION ON
ITS OWN MOTION INVESTIGATING THE
FAILURE OF TRUXTON CANYON WATER
COMPANY TO COMPLY WITH
COMMISSION RULES AND REGULATIONS.

DOCKET NO. W-02168A-10-0247

STAFF'S CLOSING BRIEF

I. INTRODUCTION

Truxton Canyon Water Company ("Truxton" or "Company") is a for profit water company serving approximately 875 customers within Mohave County. Truxton has held a Certificate of Convenience and Necessity ("CC&N") since the Arizona Corporation Commission ("Commission") awarded it a CC&N in Decision No. 41781 on December 15, 1971.

Commission Utilities Division Staff ("Staff") filed a Complaint and Petition for Order to Show Cause ("Complaint") on June 23, 2010 against Truxton Canyon Water Company ("Truxton" or "Company"). Staff alleged that Truxton violated several Arizona statutes, Commission Rules and Regulations, and the Arizona Constitution. Among the underlying bases for the allegations, Staff noted that Truxton has a history of noncompliance with Arizona Department of Environmental Quality ("ADEQ") and an inadequate and dilapidated system that is prone to leakage. Staff further alleged that the Company was not providing required information to Staff as well as not properly maintaining its financial books. Additionally, Staff described instances of impermissible commingling of funds between the Company and other regulated and nonregulated entities as well as the incurrence of unapproved longterm debt. Finally Staff described various customer service issues plaguing the Company.

Arizona Corporation Commission

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1 On August 10, 2010, the Commission issued Decision No. 71837, ordering Truxton to appear
2 and show cause why its actions did not constitute a violation of Arizona law and the Commission's
3 Rules and Regulations.

4 The matter proceeded to an evidentiary hearing that took place on January 18, 2011 and
5 February 28, 2011. At the hearing, Staff and the Company presented a stipulated agreement to
6 resolve the allegations presented in the Complaint. Among other things, the stipulated agreement
7 resolved that the Company agreed that specified factual circumstances occurred; that those factual
8 circumstances might constitute violations of the Arizona Revised Statutes ("A.R.S.") and Arizona
9 Administrative Code ("A.A.C."); that the Company would abide by all applicable rules, statutes and
10 constitutional requirements; and that the Company agreed to perform certain specified actions on an
11 agreed upon timeline. On May 27, 2011, the Commission issued Decision No. 72386 adopting the
12 stipulated agreement.

13 On June 16, 2011, Truxton filed in the docket its Application for Modification and
14 Reconsideration ("Application for Reconsideration") of Decision No. 72386. In its Application for
15 Reconsideration, the Company indicated two disputes with Decision No. 72386. The first was to
16 obtain clarification that the issuance of Decision No. 72386 would not constitute a reformation of the
17 water supply contract between the Claude K. Neal Family Trust ("Trust"), the owners of Truxton,
18 and the Valle Vista Property Owners Association ("Association"). The second dispute related to the
19 stipulated agreement's recommendation number 2 that Staff might appoint an interim manager for
20 Truxton without further action by the Commission in the event that the Company did not achieve
21 specified compliance requirements within an established timeframe. Truxton asserted that it
22 consented to the condition under duress. Application for Reconsideration at 4:6-13.

23 On June 28, 2011, the Commission issued Decision No. 72448 granting the Company's
24 Application for Reconsideration for purposes of further consideration. Staff filed a response to the
25 Application for Reconsideration on July 20, 2011. In Staff's response, Staff indicated its agreement
26 that rehearing would be appropriate as the Company's claim of duress rendered the validity of the
27 entire agreement suspect. Further, Staff noted that Truxton had not requested a stay of Decision No.
28 72386.

1 The Commission granted rehearing in Decision No. 72548 (August 24, 2011). In so doing,
2 the Commission did not grant a stay from the operation of Decision No. 72386. Decision No. 72548
3 at 2:23-24. The evidentiary portion of the rehearing took place on February 29, 2012 and March 1,
4 2012.

5 **II. DISCUSSION**

6 For its Complaint, Staff articulated sixteen counts of alleged violations by Truxton. In
7 addition to the allegations, the Complaint presented a summary factual background supporting the
8 allegations. For some counts, the factual underpinnings to the count were resolved by the time that
9 this matter reached the evidentiary hearing on the rehearing of Decision No. 72386. For the rest of
10 the counts the evidence illustrates that the alleged violations are ongoing. Regardless of whether the
11 underlying issue prompting the allegation of any violation has been resolved, Staff maintains that the
12 fact that the Company's operations deteriorated into a state of noncompliance constitutes a violation
13 notwithstanding a later return to compliance. The operations of the Company illustrate that violations
14 have occurred with respect to rules, statutes and orders which placed requirements on the Company
15 which were not and are not being met.

16 **A. Health and Safety Violations.**

17 In addition to having to provide water utility service pursuant to its CC&N at just and
18 reasonable rates that the Commission has approved, Truxton has an affirmative obligation to provide
19 safe and adequate service to its ratepayers. The agency chiefly responsible for ascertaining the
20 quality of Truxton's utility service from a health and safety perspective is ADEQ. As illustrated by
21 ADEQ orders and the most up to date drinking water compliance status reports obtained by Staff
22 from ADEQ, Truxton remains out of compliance with ADEQ.

23 **1. Safe and Adequate Drinking Water System.**

24 A.R.S. § 40-321(A) provides that "[w]hen the commission finds that the equipment, facilities
25 or service of any public service corporation, or the methods of manufacture, distribution,
26 transmission, storage or supply employed by it are unjust, unreasonable, unsafe, improper, inadequate
27 or insufficient, the commission shall determine what is just, reasonable, safe, proper, adequate or
28 sufficient, and shall enforce its determination by order or regulation." Likewise, Ariz. Const. Art.

1 XV, Section 3, provides that the Commission may enter “orders for the convenience, comfort, and
2 safety and preservation of the health” of the customers of a public service corporation.”

3 A.R.S. § 40-321(A) and Article 15, Section 3 of the Constitution provide authority to obtain
4 enforcement and pursuant to the authority granted thereby, Staff believes that the Commission should
5 enter an order finding that the Company has a number of deficiencies that ADEQ has uncovered as
6 well as deficiencies that Staff identified and that the Company should be required to improve its
7 facilities to make them adequate, sufficient and safe.

8 Among Staff’s recommendations related to the plant in Company usage, Staff recommends
9 that the Company be required to install meters at each interconnection point connecting its system to
10 the Trust which supplements Truxton’s water supply. Exhibit S-4, Direct Testimony of Dorothy
11 Hains at 4:7-11. Additionally, Staff recommends that the Company be ordered to come into full
12 compliance with ADEQ. Pursuant to an ADEQ Drinking Water Compliance Status Report dated
13 February 1, 2012, the Company has numerous ongoing major deficiencies. Exhibit S-11, Updated
14 Surrebuttal of Elijah Abinah, Attachment A. The water supplied by Truxton for drinking purposes
15 tests for 23.6 mg/L arsenic contamination which exceeds the maximum contaminant level for
16 arsenic. *Id.* Additionally, the Company has not demonstrated to ADEQ that it is sufficiently
17 removing residual disinfectant chemicals from water being supplied for drinking purposes. *Id.*
18 Further, ADEQ noted concern that the test sampling methodology is suspect due to identical test
19 results over several testing cycles. *Id.*; February 29, 2012 Hearing Transcript at 108:6-21.

20 Staff has also recommended that the Company be ordered to repair all existing leaks and to
21 timely repair any future leaks.¹ Exhibit S-3, Surrebuttal Testimony of Alexander Igwe at 13:13-14;
22 Exhibit S-11, Updated Surrebuttal Testimony of Elijah Abinah at 3:14 – 4:5. Staff noted that
23 persisting leaks have safety and reliability impacts. Exhibit S-4, attachment DMH-1 at 1, FN 1;
24 February 29, 2012 Hearing Transcript at 109:11 – 111:16. Continuous leakage can impact safety
25 under negative water pressure circumstances by allowing contaminants to be sucked into the water
26

27 ¹ Staff notes that during the hearing, Staff witness Alfonso Amezcua testified with respect the Company’s leaks that the
28 leaks are substantially no longer an issue, that the existing leaks were for the most part repaired and that he believed
that the Company had implemented a methodology that allowed them to timely and adequately repair future leaks.
February 29, 2012 Hearing Transcript at 158:24-159:7.

1 stream. *Id.* Likewise under positive pressure circumstances, a continuous leakage can cut away
2 material supporting the pipeline, creating a potential for the pipeline to buckle and abruptly rupture.
3 *Id.*

4 For all the above reasons, Staff believes that pursuant to A.R.S. § 40-321(A) and Ariz. Const.
5 Art. XV, Sect. 3, the Company should be ordered to make such repairs to its system and equipment as
6 are necessary to provide safe, proper and adequate drinking water utility service to its customers.

7 **2. Provision of Potable Water.**

8 A.A.C. R14-2-407(A) provides that “[e]ach utility shall be responsible for providing potable
9 water to customer’s point of delivery.” Truxton has a history of noncompliance with ADEQ, in part
10 because the Company has failed to perform adequate testing, monitoring, or reporting to demonstrate
11 that it is providing potable water to the customer’s point of delivery. Exhibit S-4, attachment DMH-1
12 at 4 – 6. On May 24, 2007, ADEQ issued a Compliance Order with Civil Administrative Penalty to
13 Truxton for numerous violations, including of A.A.C. R18-5-502(B), R18-5-505(B), R18-4-124,
14 R18-4-214.02, R18-4-105(E)(1)(Table 3)(2), R18-4-104(L), R18-4-214.02(I)(1), and R18-4-
15 214.02(E). Exhibit S-4, Attachment DMH-1 attachment 3. On December 17, 2008, the Company
16 received a notice of violation from ADEQ for exceeding arsenic contaminant levels and for failure to
17 notify the public of the contamination. Exhibit S-4, Attachment DMH-1, attachment 5. On May 19,
18 2009, ADEQ cited Truxton for failure to maintain 20 pounds per square inch (“psi”) pressure among
19 other noncompliances. Exhibit S-4, Attachment DMH-1, attachment 6. ADEQ again reported
20 Truxton’s system as possessing major and numerous deficiencies in its October 14, 2009 Sanitary
21 Survey Report. Exhibit S-4, Attachment DMH-1, attachment 7.

22 Owing to the ongoing state of noncompliance with ADEQ health and safety standards, the
23 Company cannot demonstrate that it is presently delivering safe potable water to the customer’s point
24 of delivery. *See* Exhibit S-11, Attachment A, February 1, 2012 ADEQ Drinking Water Compliance
25 Status Report. The record evidence demonstrates that Truxton is not providing water that meets
26 ADEQ drinking water standards. Consequently, the Company is in violation of A.A.C. R14-2-
27 407(A).

28 ...

1 **3. Water Pressure at Customer's Meter or Point of Delivery.**

2 In addition to ADEQ's identification of a pressure issue within Truxton's system, Staff
3 separately identified an instance of water pressure being below 20 psi at the point of customer
4 delivery. Pursuant to A.A.C. R14-2-407(E), "[e]ach utility shall maintain a minimum standard of
5 delivery pressure of 20 pounds per square inch gauge (psi) at the customer's meter or point of
6 delivery." The ADEQ Inspection Report and Sanitary Survey from 2009 listed pressure issues that
7 would likewise represent violations of A.A.C. R14-2-407(E). See February 29, 2012 Hearing
8 Transcript at 107:2-5; Exhibit S-4, Attachment DMH-1, attachments 6 and 7. Based on Staff's
9 investigation, Staff concludes that the service connection at issue does receive at least 20 psi at the
10 meter connection but due to a steep increase in elevation between the meter and the customer's
11 building, the customer is experiencing less than 20 psi within the building. Therefore, Staff no longer
12 believes that there was a violation of A.A.C. R14-2-407(E).

13 **4. Supplying Satisfactory and Continuous Level of Service.**

14 The extent to which Truxton is noncompliant with ADEQ represents a violation of A.A.C.
15 R14-2-407(C). A.A.C. R14-2-407(C) provides that "[e]ach utility shall make reasonable efforts to
16 supply a satisfactory and continuous level of service." Truxton's arsenic levels, TTHMs, HAA5s, and
17 disinfection bi-product levels have been out of compliance with ADEQ standards on a prolonged
18 basis. In addition Truxton has a history of not complying with required monitoring and reporting.
19 See e.g. Exhibit S-4, Attachment DMH-1, attachments 4 (ADEQ Consent Order No. DW-49-07), 5
20 (ADEQ Notice of Violation December 17, 2008), and 7 (ADEQ Sanitary Survey October 14, 2009).
21 Staff concedes that several noncompliant issues have been corrected or are in the process of being
22 corrected. However, as seen by the dates of the numerous ADEQ reports, Truxton has been out of
23 compliance on several of these matters for years. The delivery of safe drinking water is intrinsic to
24 providing satisfactory and continuous service and the ongoing nature the Company's outstanding
25 noncompliances with ADEQ represents a violation of A.A.C. R14-2-407(C).

26 **B. Reporting and Bookkeeping Violations.**

27 In addition to health and safety violations, Staff observed several instances of the Company
28 not complying with requirements related to how it reports information to Commission Staff and how

1 it is required to maintain its books. Similarly, the Company's failure to properly notify Staff of Main
2 Extension Agreements it had entered into drew Staff allegations that Truxton had violated the rules
3 related to the recording and approval of Main Extension Agreements.

4 **1. NARUC and GAAP Accounting.**

5 A.R.S. § 40-221 provides in pertinent part that "the Commission is authorized to prescribe the
6 record keeping methods and accounts of public service corporations." A.R.S. § 40-221(C) states that
7 "[i]t shall be unlawful for any such corporation to keep any accounts, records or memoranda other
8 than those prescribed by the commission, or those prescribed by or under the authority of any other
9 state or of the United States, excepting such accounts, records or memoranda as shall be explanatory
10 of and supplemental to the accounts, records or memoranda prescribed." According to A.A.C. R14-
11 2-411(D)(1), "[e]ach utility shall keep general and auxiliary accounting records reflecting the cost of
12 its properties, operating income and expense assets and liabilities, and all other accounting and
13 statistical data necessary to give complete and authentic information as to its properties and
14 operations." Pursuant to A.A.C. R14-2-411(D)(2), "[e]ach utility shall maintain its books and
15 records in conformity with the NARUC [National Association of Regulatory Utility Commissioners]
16 Uniform System of Accounts for Class A, B, C, and D Water Utilities."

17 At the time that the Complaint was filed, Staff observed that the Company was not
18 maintaining its books in a NARUC compliant manner. Exhibit S-2, Direct Testimony of Alexander
19 Igwe at 11:25-29. Likewise, Staff alleged that Truxton's accounting books and records did not
20 comply with Generally Accepted Accounting Principles ("GAAP"). *Id.* at 13:1-14. As explained by
21 Mr. Igwe,

22 On May 6, 2010, (prior to the issuance of the OSC), Staff visited the Company's
23 corporate offices in Kingman for the sole purpose of examining its accounting books
24 and records. Staff found that the Company's accounting books and records were
25 neither in compliance with NARUC USoA or GAAP. For example, the Company's
26 chart of accounts was not consistent with NARUC USoA. Also, Staff found the
Company's accounting records had material misclassification of transactions. For
example, customer deposits and Advances in Aid of Construction, which should have
been classified as liabilities, were recorded as revenues.

27 *Id.* at 13:17-24. Truxton witness Chris Hopper conceded in prefiled testimony that the Company's
28 records did not conform to NARUC requirements. Exhibit A-3, Post Hearing Testimony of Chris

1 Hopper, Exhibit 1. Likewise, Mr. Hopper confirmed on examination that the records of the Company
2 were not maintained in a NARUC compliant manner. January 18, 2011 Hearing Transcript at 87:5-8;
3 February 28, 2011 Hearing Transcript at 188:14-15. In a follow up inspection that took place in
4 November 2011, Mr. Elijah Abinah observed that the accounting records and bookkeeping still did
5 not conform to NARUC standards. February 29, 2012 Hearing Transcript at 179:1-4. The
6 Company's failure to maintain its accounts in a NARUC and GAAP compliant manner violates
7 A.R.S. §§ 40-221, -221(C), and A.A.C. R14-2-411(D)(2).

8 **2. Commingling of Funds.**

9 A.R.S. § 40-204(A) provides that "[e]very public service corporation shall furnish to the
10 commission, in the form and detail the commission prescribes, tabulations, computations, annual
11 reports, monthly or periodical reports of earnings and expenses, and all other information required by
12 it to carry into effect the provisions of this title and shall make specific answers to all questions
13 submitted by the commission. If a corporation is unable to answer any question, it shall give a good
14 and sufficient reason therefore." Pursuant to A.R.S. § 40-204(B), "[w]hen required by the
15 commission, a public service corporation shall deliver to the commission copies of any maps,
16 profiles, contracts, franchises, books, papers and records in its possession, or in any way relating to
17 its property or affecting its business, and also a complete inventory of all its property in the form the
18 commission directs."

19 In addition to the failure to comply with NARUC and GAAP, Mr. Hopper admitted that the
20 extent of inappropriate bookkeeping included the commingling of funds between Truxton, Cerbat
21 Water Company, and the Trust. February 28, 2011 Hearing Transcript at 224:9-15; Exhibit A-3,
22 attached Exhibit 1. Likewise, Mr. Abinah confirmed that it is Staff's understanding that
23 commingling has occurred. February 29, 2012 Hearing Transcript at 180:4-7.

24 As explained by Mr. Abinah, the inappropriate bookkeeping, including the commingling of
25 funds, is detrimental to the Company as well as ratepayers. *Id.* at 180-81. In addition to creating
26 problems involving the subsidization of regulated and unregulated activities by ratepayers, the
27 noncompliant bookkeeping can mask cash flow problems making legitimate expense recovery more
28 difficult for the utility and thereby jeopardize its operations. *Id.* at 181. The commingling of funds

1 has hindered Staff in the identification of what plant serving Truxton is actually owned by Truxton.
2 However, Staff believes that the Company is no longer commingling funds. *Id.* at 181:19-182:1.

3 Failure to provide documentation that establishes the labor and material costs of the Company
4 upon Staff request owing to Truxton expenses being paid by other entities as part of the commingling
5 of funds is a violation of A.R.S. § 40-204(A). Additionally, the commingling impairs the ability to
6 determine what the complete property of the Company is and constitutes a violation of A.R.S. § 40-
7 204(B).

8 Likewise, Staff has observed that the Company has not been providing accurate water loss
9 reports in its utilities annual reports. As explained by Ms. Hains, the Company has been recording
10 the water sold, as counted from the ratepayer service meters and recorded the total as the water
11 pumped. February 29, 2012 Hearing Transcript at 99:22 – 100:4. It is Staff's understanding that the
12 Company knows that this results in inaccurate records although the Trust is willing to absorb the
13 financial consequences. *Id.* at 100:6-11.

14 The consequences of the Company's choice to absorb the expenses related to its water loss are
15 predictably much the same as for the commingling of funds. The Trust incurs expenses related to the
16 pumping and treating of water that it in turn sells to the Company by way of its water supply
17 agreement. Exhibit S-2, attached Exhibit AII-2, Water Supply Agreement. It is not difficult to see
18 the problem from the ratepayer's perspective when an unforeseen expense, such as a costly well
19 repair that cannot be repaid because the Trust is not recovering its expenses and has insufficient cash
20 flow to pay for the repair. Truxton is dependent on the Trust to meet its water supply needs.
21 February 29, 2012 Hearing Transcript at 96:23 – 97:12. Should its water supply be jeopardized
22 because of the Trust's inability to fund ongoing operations, the ratepayer is harmed. As such, the
23 matter of inaccurate water loss is not a harmless issue that the Company can ignore by shrugging off
24 the financial consequences on the Trust. The willfully inaccurate water loss reporting by the
25 Company constitutes a violation of A.R.S. § 40-204(A) without a good and sufficient reason
26 therefore.

27 ...

28 ...

1 **3. Main Extension Agreements.**

2 Staff alleged in its Complaint that the Company was not observing the requirements related to
3 entering into main extension agreements and then notifying Staff. At the time that the Complaint was
4 filed, there were two outstanding main extension agreements that were not provided to Staff, one with
5 Mr. James Bacus and the other with the Northern Arizona Consolidated Fire District (NACFD), and
6 were apparently not conforming to the Commission's requirements for entering a main extension
7 agreement.

8 A.A.C. R14-2-406(M) requires that "[a]ll agreements under this rule shall be filed with and
9 approved by the Utilities Division of the Commission. No agreement shall be approved unless
10 accompanied by a Certificate of Approval to Construct as issued by the AZ Department of Health
11 Services [Arizona Department of Environmental Quality]. Where agreements for main extension are
12 not filed with the Utilities Division, the refundable advance shall be immediately due and payable to
13 the person making the advance." Similarly, A.A.C. R11-2-406(G) requires that "[a]ll agreements
14 entered into under this rule shall be evidenced by a written statement, and signed by the Company
15 and the parties advancing the funds for advances in aid under this rule or the duly authorized agents
16 of each." Finally, A.A.C. R14-2-409(D)(1) provides that "[e]ach customer shall be billed under the
17 applicable tariff indicated in the customer's application for service."

18 NACFD ultimately provided a copy of the hydrant installation and maintenance agreement to
19 Staff. Exhibit A-5, Rebuttal Testimony of Rick Neal, Attachment 4; Exhibit S-11 at 7:7-8. However,
20 provision of the documents by NACFD to Staff is not what the rule requires. A.A.C. R14-2-406(M)
21 requires that Truxton file the NACFD agreement with Staff for Staff approval. This has not occurred
22 and so Staff maintains that the Company has violated A.A.C. R14-2-406(M) with respect to the
23 NACFD agreement.

24 Mr. Bacus has initiated a separate complaint in Docket No. W-02168A-10-0111, and the
25 Company has provided spreadsheets and an affidavit from Mr. Bacus indicating that refunds are
26 underway. Truxton Canyon Notice of Filing Documents Requested by Court filed March 9, 2012,
27 Attachments 3 and 4. As A.A.C. R14-2-406(M) specifies refunds as the required outcome in the
28 event that Staff did not approve the main extension agreement, Staff no longer believes that the

1 Company has violated A.A.C. R14-2-406(G), (M) or R14-2-409(D)(1) with respect to the Main Line
2 Extension Agreement with Mr. Bacus.

3 **C. Financial Violations.**

4 In addition to bookkeeping and accounting record violations, Staff noted in its review of
5 annual reports for the Company that it lists more than \$400,000 longterm debt by way of a line of
6 credit from the Trust for which it has not obtained Commission authorization. Exhibit S-2 at 17;
7 February 29, 2012 Hearing Transcript at 175:16-23. When Staff inquired about the longterm debt,
8 the Company did not dispute the existence of the longterm debt. "The Company contends that its
9 recorded long-term debts were granted by the Trust during emergencies. Further the Company
10 argues that if the Trust did not fund its emergency needs, it would have been unable to provide
11 service during such periods." Exhibit S-2 at 17:13-15.

12 A.R.S. § 40-301(B) provides that "[a] public service corporation may issue stocks and stock
13 certificates, bonds, notes and other evidences of indebtedness payable at periods of more than twelve
14 months after the date thereof, only when authorized by an order of the commission. Likewise, A.R.S.
15 § 40-302(A) states that, "[b]efore a public service corporation issues stocks and stock certificates,
16 bonds, notes and other evidences of indebtedness, it shall first secure from the commission an order
17 authorizing such issue and stating the amount thereof, the purposes to which the issue or proceeds are
18 to be applied, and that, in the opinion of the commission, the issue is reasonably necessary or
19 appropriate for the purposes specified in the order, pursuant to § 40-301, and that, except as otherwise
20 permitted in the order, such purposes are not, wholly or in part, reasonably chargeable to operative
21 expenses or to income."

22 The longterm debt was obtained without Commission approval which constitutes a violation
23 of A.R.S. § 40-301(B) as it has a term longer than twelve months. Likewise it violates A.R.S. § 40-
24 302(A) because the incurrence of the debt was not authorized by the Commission. In addition to a
25 finding that the Company has violated A.R.S. §§ 40-301(B) and -302(A), Staff recommends that the
26 Commission order that the longterm debt be treated as paid in capital during the Company's next rate
27 case as is Staff's ordinary recommendation in the case of utility's incurring unauthorized longterm
28 debt. February 29, 2012 Hearing Transcript at 176:16-19.

1 **D. Consumer Service Violations.**

2 The Company also has a history of inadequate or nonresponsiveness to customer inquiries and
3 complaints. As explained by Staff witness Alfonso Amezcua, Truxton typically “takes much longer
4 than five business days to respond to both customers and Commission Staff. Also, once they do
5 respond, Staff often concludes their response is inadequate or does not properly address the issue.”
6 Exhibit S-6, Direct Testimony of Alfonso Amezcua at 4:16-18. By not responding to the numerous
7 customer inquiries and complaints, the Company was not providing a satisfactory level of service.
8 The inadequacy of the Company’s responsiveness to customer and Staff inquiries prompted Count
9 Nine of the Complaint.

10 A.A.C. R14-2-411(A)(1) states that “[e]ach utility shall make a full and prompt investigation
11 of all service complaints made by its customers, either directly or through the Commission.”
12 Pursuant to A.A.C. R14-2-411(A)(2), “[t]he utility shall respond to the complaint and/or the
13 Commission representative within five (5) working days as to the status of the utility investigation of
14 the complaint.” The state of the Company’s responsiveness to customer inquiries and complaints,
15 and to Staff inquiries frequently has not been compliant with the requirements of A.A.C. R14-2-
16 411(A)(1) and (2). Exhibit S-6 at 4-5. Consequently, the Company has violated A.A.C. R14-2-
17 411(A)(1) and (2).

18 However, Staff acknowledges that the Company has made strides to improve its
19 responsiveness. February 29, 2012 Hearing Transcript at 162:5 – 163:12. Staff believes that the
20 Company has presently attained a state of compliance with A.A.C. R14-2-411(A)(1) and (2).
21 Nonetheless, Staff believes that it would be appropriate for the Commission to find that Truxton was
22 in noncompliance with A.A.C. R14-2-411(A)(1) and (2) and to require the Company to remain in
23 compliance with A.A.C. R14-2-411(A)(1) and (2).

24 **E. Violation of Commission Rules and Regulations.**

25 Despite the progress experienced by the Company toward coming into compliance, it has
26 violated numerous Commission rules and statutes and remains in violation of a number of
27 Commission regulations. Count Thirteen of the Staff Complaint alleges that by virtue of the many
28 noncompliances by Truxton that the Company has violated A.R.S. § 40-202(L). A.R.S. § 40-202(L)

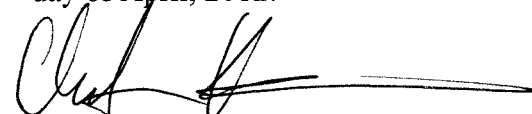
1 provides that, "[a] public service corporation shall comply with every order, decision, rule or
2 regulation made by the commission in any matter relating to or affecting its business as a public
3 service corporation and shall do everything necessary to secure compliance with and observance of
4 every such order, decision, rule or regulation."

5 Notwithstanding the improvements made by the Company, Truxton remains out of
6 compliance with several Commission regulations relating to providing safe and adequate service,
7 obtaining approvals for financing and entering into main line extension agreements. Since the filing
8 of the Complaint, Truxton has fallen into noncompliance with additional requirements, principally
9 Decision No. 72386. Among other things, Decision No. 72386 required that the Company obtain a
10 transfer of the wells owned by the Trust. *See* Decision No. 72386 at 19:24-20:3, adopting the
11 Stipulated Agreement; Decision No. 72386, Exhibit C, Attachment 1, Recommendation 4. The
12 Commission has not granted the Company a stay of the requirements of Decision No. 72386.
13 Decision No. 72548 at 2:23-24. As the well transfer requirement had a deadline of June 30, 2011,
14 and the wells have not been transferred, the Company is now out of compliance with Decision No.
15 72386 as well. Consequently, the Company has violated A.R.S. § 40-202(L).

16 **III. CONCLUSION**

17 For all the above stated reasons, Staff recommends that the Commission find that Truxton has
18 violated A.R.S. §§ 40-202(L), -204(A), -204(B), -221, -221(C), -301(B), and -302(A), as well as
19 A.A.C. R14-2-406(M), -407(A), -407(C), -407(E), -411(A)(1), -411(A)(2), -411(D)(1), and -
20 411(D)(2). Staff recommends that the Commission authorize Staff to seek the appointment of a
21 qualified Interim Manager selected by Staff and that the Commission impose fines and penalties
22 pursuant to Article XV, Section 19 of the Arizona Constitution and A.R.S. §§ 40-424 and -425.

23 RESPECTFULLY SUBMITTED this 23rd day of April, 2012.

24 

25 Kimberly A. Ruht
26 Charles Hains
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1 Original and thirteen (13) copies
2 of the foregoing filed this
23rd day of April 2012 with:

3 Docket Control
4 Arizona Corporation Commission
1200 West Washington Street
5 Phoenix, Arizona 85007

6 Copies of the foregoing mailed this
23rd day of April 2012 to:

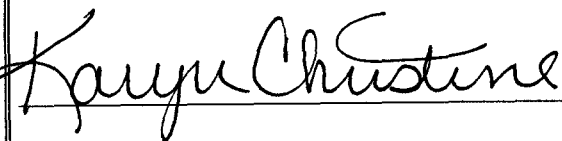
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